

September 2, 2008

Mr. Ford called the meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m. The Sunshine Statement was read.

Members Present: Mr. Mazza, Mr. Bischoff, Mr. Martin, Mr. Taibi, Mr. Badenhausen, Mrs. Corcoran, Mr. Walchuk, Mr. Ryland, Mr. Ford, Mr. Kirkpatrick

Members Absent: None

Others Present: Atty. Mark Anderson, Carl Hintz, John Reymann, Stephen Souza, Anthony Rana, Atty. Lloyd Tubman, Rita Petri, William Cordasco, Atty. Paul Schneider, James Woods, John McDonough, William Mulligan, Michele McBride, Robert O'Neill

Approval of Minutes: Mrs. Corcoran noted some corrections (names of persons voting and date) to the July 24, 2008 Regular minutes. Mr. Bischoff made a motion to approve the minutes, as amended. He also made a motion to approve the Executive Session minutes of July 24, 2008. Mr. Kirkpatrick seconded the motion.

Vote: Ayes: Mr. Bischoff, Mr. Kirkpatrick, Mr. Mazza, Mr. Martin, Mr. Taibi, Mr. Badenhausen, Mrs. Corcoran, Mr. Ford

Abstain: Mr. Walchuk, Mr. Ryland

Memorialization of Resolution: Petri, Block 15, Lots 8 & 8.01, 25 Stonehaven Lane:

Resolution #2008-005: Atty. Lloyd Tubman was present on behalf of applicant. Ms. Tubman had questions about the Resolution, specifically about future improvements not being permitted on the subdivided lots. Atty. Tubman asked if that was the intention of the Board. Atty. Anderson said an application could be submitted requesting relief from conditions of the Resolution. Board members discussed the conditions in the Resolution. Atty. Tubman decided that, with the approval of her client, she would re-notice for a new Hearing and ask the Board's reconsideration of the conditions of approval. Ms. Tubman will be in touch with the Board office regarding the date.

Adoption of Scenic Byway Designation of Interstate 78: Mayor Mazza gave an overview of the Resolution. Mr. Bischoff made a motion to adopt the Resolution. Mrs. Corcoran seconded the motion.

Vote: Ayes: Mr. Bischoff, Mrs. Corcoran, Mr. Mazza, Mr. Martin, Mr. Taibi, Mr. Badenhausen, Mr. Walchuk, Mr. Ford, Mr. Kirkpatrick

Issue of Completeness: Perryville Wine & Spirits: Block 12, Lot 8.04, 72 Route 173

West: Mr. Martin, applicant/owner, recused himself. William Cordasco was present on behalf of applicant. Township Engineer John Reymann had recommended the application be deemed complete. Mr. Kirkpatrick made the motion to deem it complete. Mr. Taibi seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Taibi, Mr. Mazza, Mr. Bischoff, Mr. Badenhausen, Mrs. Corcoran, Mr. Walchuk, Mr. Ryland, Mr. Ford

Mr. Martin returned after the above action.

Pilot Travel Centers, LLC: Block 11, Lot 24.03, 68 Route 173 West: Public Hearing: Amended Preliminary & Final Site Plan: Messrs. Bischoff and Mazza recused themselves prior to the Hearing. Mr. Ford asked Atty. Anderson to give the Board an overview of the process the Board is to follow and the reasons for the process. Mr. Anderson said extensive Hearings had been held in the matter. Use variances requested by applicant were not approved. Pilot instituted litigation after the denial.

A subcommittee of the Planning Board and representatives of Pilot held several meetings to try to reach a compromise between the two parties. The proposal before the Board tonight is a result of those settlement meetings. Atty. Anderson stated the use variances sought were continuation and expansion of the truck stop-travel center in a zone where it is not permitted, a convenience store and change from a sit-down restaurant to a Subway. Mr. Anderson said Pilot takes the position that they can continue the use of the convenience store. The Board disagrees. Atty. Anderson said the use at the site is a continuation of the former Johnny's Truck Stop. That business, as testified to, had been there since the 1960's. It was a permitted use until the Township changed the zoning.

Mr. Anderson had prepared a Draft Resolution that included recommendations of the subcommittee. He stressed that the Board would only be discussing use variance issues tonight. If the proposed uses were approved, Pilot would submit a site plan application that would include information on traffic, layout, environmental impact, security, fencing, etc. A Hearing would be held to address the site plan issues. The Board would have to satisfy itself that the proposal would be an improvement over that which exists presently at the site. Mr. Anderson explained the role the Public would be allowed at the Hearings.

Atty. Paul Schneider, representing Pilot, had comments regarding what was not in dispute and that which is in dispute. Mr. Schneider said he understands the Board and the Public would like to see environmental, traffic circulation and aesthetic improvements. He also said Pilot had hoped to address both use variance and site plan issues tonight. After discussing the matter with Atty. Anderson, it seemed the better approach was to bifurcate the application, first addressing use variance issues. Atty. Schneider asked if issues pertaining to the Draft Resolution be addressed first, or if testimony should be first. Atty. Anderson said it would be appropriate to proceed with testimony.

Atty. Anderson reviewed required notice documents and found them to be satisfactory. The documents were marked Exhibit A-1. Atty. Schneider provided the newspaper proof of publication. It was marked Exhibit A-2. Mr. Ford asked that professionals, when making their presentation, draw a comparison to the prior plan and explain how it is different from the existing site. Mr. Schneider said the prior plan was essentially to demolish the existing building and start from scratch.

He said the proposal before the Board tonight is to leave the existing buildings and renovate them. The fueling positions will also be left in their existing locations.

James Woods, applicant's engineer, was sworn by Atty. Anderson. Mr. Kirkpatrick asked Mr. Woods if he had testified before the Board and been recognized as an expert. Mr. Woods replied in the affirmative. He was recognized as an expert in his profession. Atty. Schneider asked Mr. Woods to explain what the site is like at the present time. Mr. Woods gave an overview of existing conditions. He displayed a Bird's Eye View of Site and Site Vicinity. It was marked Exhibit A-3. The changes proposed include renovation and remodeling of the interior and exterior of the building. He said about three-quarters of an acre of pavement will be removed and replaced with landscaping. The reduction will have environmental benefits and will be discussed at the site plan stage. Entrance to the site will be easterly and the westerly driveway will be used as the exit. Applicant has agreed to move the westerly driveway about 14 to 15 feet further westward. However, that change must be approved by the NJDOT. Mr. Kirkpatrick asked if the purpose for that change was to give more stack room on the facility and would alleviate some off-site traffic conditions. Mr. Woods said he was not sure. He wasn't involved in settlement negotiations. Mr. Woods noted there was a traffic engineer. He said pavement striping and additional signage have been added to the proposal. There will be no change in the number of gasoline fueling positions. One additional diesel fueling position is proposed. Mr. Kirkpatrick said that was inconsistent with the Wastewater Management Plan (WMP) before the NJDEP. The WMP Notice stated there would no additional diesel fueling stations. Mr. Kirkpatrick asked if that could be rectified. Mr. Woods said he would look into the matter.

Mr. Woods said a new truck scale, additional landscaping, a below grade septic system and some manufactured water quality treatment devices are proposed. The number of diesel pumps will increase from six to seven. Sidewalks are proposed around the building. Mr. Woods said some of Mr. Hintz's comments have been addressed. He was vaguely familiar with proposed aesthetic improvements to the building. Mr. Ford asked for questions from the Board. Mr. Taibi asked if there would be an increase in the fuel pump capacity, since an additional pump is proposed. Mr. Woods said the purpose of that addition was a matter of convenience. He did not see a proportionate increase in the amount of fuel pumped. Atty. Schneider said the intention was to improve stacking and circulation. Mr. Schneider said the issue will still have to be discussed. Mr. Ryland had a comment on the changing of the entrances. He said trucks are looking for parking spots. He did not feel the proposal would work. Mr. Ryland said there is an existing huge traffic problem. Mr. Woods explained how the plan would work. Mr. Taibi voiced a concern about truck access to the scales. The location of the scales would be changed from their present location. Mr. Woods felt the location was the best place. William Mulligan, Pilot Travel Center, said Mr. Taibi had presented a good point. He told Mr. Woods the scales could be relocated. Mr. Woods said the plan would be modified to reflect the change. Mr. Taibi asked about the maintenance pit in the garage. He believes it is an accident waiting to happen.

Mr. Mulligan said he would respond. He was sworn retroactively by Atty. Anderson. James McDonough, Planner and Joseph Staigar, Traffic Engineer, were also sworn by Mr. Anderson. Mr. Mulligan said a cargo net will be installed as a safety measure. Mr. Taibi also voiced a concern about egress. Only one egress is proposed. He asked that consideration be given to make the pit safe. Atty. Schneider said Pilot will try to address that in the site plan. Mr. Hintz asked about lighting. Mr. Woods said full downward lighting is proposed. Mr. Hintz also asked about signage. Mr. Woods said there will be additional directional signs and striping. Dr. Souza asked the location of the oil-water separator. Mr. Woods said it is west of the westerly curb line. Mr. Souza asked if details about runoff or spill being directed into the waste pit would be provided. Mr. Woods said testimony would be provided about that matter at the site plan Hearing. Mr. Reymann asked Mr. Woods if he had reviewed his report. Mr. Woods said he had reviewed Mr. Reymann's report and didn't think there were any major concerns. Mr. Reymann said he had addressed a number of engineering concerns that required a complete engineering review. They included dimensions, details and grading. He asked Mr. Woods to call him with questions.

Mr. Kirkpatrick asked Mr. Woods if it was anticipated that there would be increased water usage and wastewater generated from the site. Mr. Kirkpatrick said there were two different numbers presented to the public. Mr. Woods said there is a consultant working on the wastewater generation. He said the site plan application will reflect some modifications. Mr. Ford asked for questions from the Public. Robert O'Neill, NJ Water Supply Authority, had a question about the water quality management plan amended application before the NJDEP. He wanted to know the total amount of wastewater generation. Mr. Mulligan said he believed Pilot had applied to NJDEP for a total of 6,500 gallons per day (gpd). Mrs. Corcoran recalled that wastewater management plan amendment was for 6,500 (gpd). However, the projected flow was lower. Mr. Mulligan said the flow was projected to be about 3,900 gpd. Mrs. Corcoran believes both numbers will be in the amendment. Mr. Kirkpatrick emphasized the matter needs to be resolved.

Michele McBride, 10 Old Forge Lane, had a question about the 7-1/2 acre developed portion of the site that was shown on the Google Map and if it included the detention pond area. Mr. Woods didn't believe the pond was included. Ms. McBride also asked about fencing. Mr. Woods said he thought the proposed fencing details had been submitted. That issue will be addressed with the site plan. Ms. McBride also had a question about a rectangle shown on the Map. Mr. Woods said that was a fenced area that surrounds the treatment component of the proposed new wastewater management plan system. Mr. Woods said the system will be both below and above the ground.

Mr. Ryland asked who was responsible for the fuel-oil company's spill containment. Mr. Mulligan said it is Pilot's responsibility. Mr. Ryland also asked if the fuel-oil company's storage (82,000 gallons) was included with the diesel fuel storage. Mr. Mulligan replied in the affirmative. Mrs. Corcoran asked if there were any plans to change the goal post sign to comply with the Land Use Ordinance.

Mr. Woods said “No”. It will be relocated. Atty. Schneider said the sign, by terms of the Ordinance, is grandfathered. Mrs. Corcoran asked “Even, if you move it?” Atty. Schneider said Pilot did not ask to move the sign. It was suggested by a Subcommittee member. Mr. Ford asked if the driveway was moving. Mr. Mulligan said the driveway was moving towards the entrance to help establish a unified entrance at the east side of the project. Mr. Kirkpatrick said that will be discussed during the site plan Hearing.

Atty. Schneider asked John McDonough to come forward. He displayed a Plan entitled Pilot Proposed Site Plan Conditions. It was marked Exhibit A-4.

A five-minute recess was taken.

Mr. McDonough began his testimony. Atty. Schneider said that Mr. McDonough had another exhibit. The three-page Exhibit was marked A-5. That Exhibit was an aerial photograph taken prior to Pilot taking over the site. Mr. McDonough described the Exhibit. He said the site fronts on a State roadway and is oriented toward servicing the motoring public. Mr. McDonough said land use patterns follow transportation patterns. He emphasized environmental planning considerations. The Spruce Run Reservoir is north of the site. There is vacant land to the north and east and there are no residential properties within 200-feet of the site. Mr. McDonough said there is a combination service station/convenience store, a service station and a sole convenience store at three of the four corners around Exit 12. He said that Pilot, even though it is larger, is compatible with the other businesses. Mr. McDonough described the uses on the Pilot site. He said there is a home-heating oil facility, the diesel-fueling component, an auto repair facility, a restaurant-retail component and a gasoline service component. Pilot proposes remodeling the restaurant-retail component into a Subway and convenience store facility. Mr. McDonough said that no perimeter expansion was proposed. There will be improved buffering too. Mr. McDonough emphasized the proposed significant exterior renovation. It will be more reflective of local architecture.

The next Exhibit displayed was Ground Photos on Site. It was marked Exhibit A-5 and is a larger version of the second page of the three-page Exhibit. The Exhibit showed a series of twelve photos. The photos show improvements to the site since its takeover by Pilot. Mr. McDonough gave a brief description of each of the twelve photos. Mr. McDonough also gave a brief description of each of the twelve photos of the third page of Exhibit A-5.

Mr. McDonough said the focus tonight was use oriented. He said the site is in the Professional Office District and uses permitted include professional offices, including medical clinics, service businesses and financial and research facilities. Service stations are no longer permitted in the zone. They are, however, protected as a preexisting-nonconforming use. Atty. Anderson had apprised the Board the use may continue to exist for perpetuity as a pre-existing, non-conforming use. Mr. McDonough said the convenience store and eating place were permitted conditional uses..

They would have been allowed with the service station use. Mr. McDonough said the travel center is not a permitted use. Pilot is seeking five variances. He believes they are D2 in nature. Mr. McDonough said he will wrap positive and negative criteria together. The Board can act on each individually or as a whole. Mr. Kirkpatrick said the Ordinance defines convenience store specifically. It had been determined that a convenience store did not exist. The Ordinance also differentiates between a sit-down restaurant and a fast-food restaurant. Mr. Kirkpatrick believed stating that they were preexisting uses would be incorrect. Mr. McDonough's position is that all of the uses are within the umbrella of a travel center. Mr. Kirkpatrick understood that a travel center is different than a truck stop. Mr. McDonough referenced Planner Harvey Moskowitz's Handbook. The Moskowitz book defines a travel center as including a convenience store. Mr. Kirkpatrick said the convenience store does not currently exist. Mr. McDonough stated it is his position that the facility is a travel center and has a retail and restaurant component. He believes the facility is a preexisting nonconforming use.

Mr. Kirkpatrick asked that Mr. McDonough address the requirement for a D1 variance. Mr. McDonough said the proofs are so strong that they can encompass the D1 variance. He stated the variances requested; a use variance for the proposed occupancy of a Subway Restaurant, proposed occupancy of a Pilot convenience store, a proposed addition of one diesel fueling position within the diesel fueling facilities; a variance for a proposed alteration for existing parking spaces on the property and a use variance to allow two uses on the subject property. The second use is the home heating facility. Atty. Anderson reviewed the Notice Documents again. He noted that there was a difference in the Notice as it pertained to variances and what Mr. McDonough had indicated. Atty. Schneider asked Mr. McDonough to further testify with reference to the Notice. Mr. McDonough said he believed there was consistency within the Notice. Atty. Anderson said he was not troubled with deficiencies in the Notice. He thought it did not identify things.

Atty. Schneider asked Mr. McDonough to continue. Mr. McDonough gave a rundown of the positive criteria first. He said the application advances several of the purposes of zoning, including a provision for a variety of uses to meet needs of New Jersey citizens, promoting an efficient use of land and a desirable visual environment. Mr. McDonough believes the improvement of a place of rest and refuge for travelers is beneficial. He cited efficient ordering and merchandise processing, open air dining, landscaping and architectural treatment among the improvements. Mr. McDonough said there should not be a negative impact by the traffic proposal. Pilot has management control and only westbound trucks will be directed to use the subject site. Mr. McDonough does not believe that proposed parking would generate a negative impact. Regarding circulation, truck and car traffic will be separated and that would be a benefit over that which exists. Proposed repositioning of ingress and egress will provide better efficiency.

Environmentally, there will be less impervious coverage, green spaces in the middle of the large parking lot, the back and front of the property, as well as at the entrance of the building is proposed. There will be less water runoff. The amount of pollutant discharge will be limited. Air quality will be improved because idling will be eliminated or idling management will be introduced in accordance with NJDEP regulations. Mr. McDonough said in terms of a visual impact that because of improvements to the building and additional landscaping, he saw no significant negative impact. He said the use would be compatible with the area and thought approval of the application could be granted without substantial detriment to the public good. Mr. McDonough also emphasized approval would not substantially impair the Zoning Plan and Ordinance. He said the Master Plan has an emphasis on environmental protection and neighborhood preservation. Mr. McDonough believed the positive and negative criteria had been met. He said the application should be approved.

Mr. Ford asked for questions from the Board. Mrs. Corcoran asked about Pilot's contracts with trucking companies ensuring that only westbound traffic would use the site and that eastbound trucks would not. Mr. McDonough said that was correct. Mr. Ford noted the signs directing eastbound trucks to the facility. Mr. McDonough was not aware of the signs. Mr. Mulligan said they are blue boards. He said 70% of Pilot's business is by contract and those truckers use a directory. Mr. Ryland asked if the blue boards would stay. Mr. Mulligan said Pilot would not remove those boards. Mrs. Corcoran voiced a concern about truckers abiding by the recommendation that only westbound traffic use the site. Mr. Mulligan said Pilot could not restrict eastbound trucks from using the site. Mr. Badenhause understood that the Board had no firm assurance that the site would be used for westbound only servicing.

Atty. Schneider said the discussion was about trucks. Information would be put in the directory. Mr. Mulligan said their Traffic Engineer, Joe Staigar, had taken recent traffic counts. Mr. Staigar said that in May, 2007, a traffic count showed that 87% of the traffic was westbound and 13% was eastbound. Mr. Mulligan said that was without anything in the directory. Mrs. Corcoran voiced a concern about a truck breaking down during rush hour. Mr. Ford said that was not necessarily pertinent. The components of planning should be discussed. Mr. Ford asked Mr. McDonough to draw some comparisons of a number of items. The existing site has 49 car spaces. Mr. McDonough said "Yes". Mr. Ford said that 36 to 46 are proposed. He also said the restaurant now has 75 seats. Mr. McDonough said "Yes". He also said that 20 indoor and 16 outdoor seats are proposed. Mr. Ford asked about the 85 existing truck spaces. Mr. McDonough said that number is going down. Mr. Mulligan said he thought the number would be in the low 70's. Mr. Ford asked about the proposed Subway. Would it change to a different type of fast food restaurant? Mr. McDonough said he would defer that question to the applicant. He said there are stipulations and restrictions in the Draft Resolution. He believed cooking would be restricted. There is no provision for a drive-thru for a fast food restaurant. Mr. Mulligan revisited the issue of truck parking spaces. He said 54 spaces are proposed.

Mr. Badenhause asked why Pilot would give up on a sit-down restaurant and go for a Subway. Mr. Mulligan said applicant could not make money in a full-serve restaurant. Mr. Kirkpatrick said the issue had been discussed at a negotiation session. Subway was proposed because there would be no significant on-site cooking. Mr. Mulligan said it limits water usage. Atty. Anderson said the Board could limit the approval to a particular brand. The restriction, as set forth in the Draft Resolution, states there will be no cooking, heating or baking with the exception of reheating of prepared food in microwaves. Mr. Mulligan said they need to be able to bake bread. Atty. Anderson said that is not consistent with what is there right now. Mr. Mulligan said that needs to be changed. Atty. Anderson said Pilot could take in another company, other than Subway. They could not change to a McDonalds, Wendy's or Denny's. Mr. Mulligan said it would not be a Denny's.

Mr. Taibi asked about traffic. That is the number one thing residents are concerned about. Lighting, parking spaces, the restaurant or the convenience store are not of any great concern. He asked if a sign could be installed by the Exit 12 Bridge stating that trucks coming from the west could not make left turns. Mr. Woods said the Township would have to adopt an Ordinance and NJDOT would have to grant approval. Mr. Taibi asked if Pilot would have opposition. Mr. Mulligan said he would have to give the issue consideration. He emphasized that NJDOT has the final decision within certain distances of ramps.

Mr. Ford asked for questions from Board members, Board Professionals or the Public. Michele McBride asked Mr. McDonough about other convenience stores (Exxon, Shell and the Bagelsmith) near the Pilot site. Mr. McDonough said that Shell does not have a convenience store. Ms. McBride asked for clarification that the building would remain within the current footprint. Mr. McDonough said "Yes". There will be interior modifications to the building. Ms. McBride asked if he considered storm water components, like a detention pond, to be a developed area. Mr. Woods responded. He did not consider that development. Mr. Woods said the detention basin exists and will remain in its current state. The basin is outside of the paved area. Ms. McBride asked if the septic fields would be considered to be a developed area. Mr. McDonough said that would be additional site disturbance beyond the limits of paving. Ms. McBride referenced the Bloomsbury Pilot and that it might have a chiropractor on site. Would that be a use of a travel center? Mr. McDonough responded. He did not mean to imply that would be an acceptable use. Convenience stores, fuel sales and the restaurant were the uses he was talking about for the site.

Mr. Ford asked for other questions. There were none. He asked if there were other witnesses. Atty. Schneider said he had no other witnesses. He said he would like to discuss the Draft Resolution. Mr. Ford, once again, asked if the Board, its Professionals or the Public had any questions for witnesses. Geologist/Hydrogeologist Anthony Rana asked for clarification regarding the septic design.

The septic is designed for 6,500 gallons per day (gpd) and Pilot is projecting 3,900 gpd. Is there a plan to increase water usage on the site? Atty. Schneider said he wanted to discuss that condition in the Draft Resolution. Atty. Anderson said the question should be answered. Mr. Kirkpatrick said there would be an increase in the amount of waste water discharged. Mr. Rana asked if there would be an increase of water usage. Atty. Schneider thought there would be a decrease. Mrs. Corcoran said it was not known what is being used now. Mr. Mulligan said the meters would have to be pulled. Mr. Kirkpatrick said the Wastewater Management Plan Amendment (WMPA) says Pilot is using about 2,000 gpd. Then there is a WMPA that states usage would go to 6,500 gpd. Mr. Mulligan said that is what the plan is designed for. Mr. Kirkpatrick said that water consumption could appear to go from current usage of 2,000 gpd to 6,500 gpd and the actual usage would be around 3,900 gpd. Mr. Mulligan said that was correct.

Atty. Anderson said there seemed to be a substantial increase and he heard that Pilot was planning a decrease. He didn't understand the inconsistency. Mr. Mulligan explained. He said showers and toilets are staying the same. They will, however, be low-flow. The full service restaurant was being removed and replaced with a Subway. Water used to clean the building, sidewalks and islands would not go into the septic system. Atty. Anderson wanted to know what usage Pilot proposed. Mr. Mulligan said the proposal is to build a septic system that holds 6,500 gpd. Atty. Schneider said the existing septic system was built many years ago. Standards have increased over the years. There will also be a level of treatment before water is discharged. Mr. Kirkpatrick said there appeared to be an excavation for a new septic system. Mr. Mulligan said that Johnnie's had worked on the septic system. Mrs. Corcoran said that was done about the time Pilot purchased the property. Mr. Mulligan said the Subway would use between 3,000 and 3,800 gallons. Mr. Kirkpatrick said the volume of water will increase. The volume of discharge will probably increase; however, it will be treated at a higher level. He said the only part that hadn't been addressed was how increased water consumption would impact movement of existing contaminants and whether surrounding areas would be impacted. Mr. Mulligan said that will be addressed with the site plan.

Atty. Schneider said the wording of the Draft Resolution gave him a problem. Mr. Kirkpatrick said the Resolution was based on existing consumption, 2,000 gpd. Atty. Schneider said he had no problem with the Consent Order. Mr. Mulligan said the Consent Order was signed if Pilot was allowed to rebuild the facility. He said the Township wanted applicant to run a test that the DEP did not want them to run. Mr. Mulligan said that test would have drawn down the wells. The DEP had concerns about contaminants migrating to a lower level and impacting drinking water. Mr. Mulligan said he did not have control of the property at that time. The matter went to Court and the Consent Decree stated that if the site were rebuilt and the facility were torn down and rebuilt, applicant could not exceed 2,000 gpd until a test was done. The Board would have to be satisfied that other property owner's wells would not dry up. Mr. Mulligan understood that a nearby home or business had drilled a well that impacted other properties. He asked if that was correct. Mr. Kirkpatrick said "More or Less".

Mr. Mulligan said that Pilot still technically owes the Township an aquifer test. Dr. Souza said there are a number of overlapping issues that create confusion. He said the Board has not been supplied with actual meter readings to establish usage on a long-term basis. The 2,000 gpd is a threshold limit that is set by DEP for treatment work approval. Mr. Kirkpatrick said there is an application in front of the Highlands that states Pilot's current water usage is 2,000 gpd. Dr. Souza said the number is being used as a default value. Mrs. Corcoran asked if that was because it is a NJDEPS permit. Dr. Souza said it is conceivably higher in terms of water usage since there will probably be an increased volume of traffic. Mr. Kirkpatrick said it was not the numbers, it was the number types. Dr. Souza said there was a new septic system being constructed at the time the site was sold. Mr. Kirkpatrick said the application before the DEP includes an ultraviolet system which would bring the water close to meeting drinking water standards at the time it goes into the septic system. Dr. Souza indicated there wasn't a question about the quality of the wastewater. Mr. Kirkpatrick emphasized the need to get a handle on how much water would be coming out. He wanted to know if there would be additional pumping that would draw contaminants in the upper aquifer into the lower aquifer. He said the most conservative thing for the Board was to use the 2,000 gpd number since they had no other numbers to use.

Dr. Souza said there is further confusion about the drawdown and its impact on contaminants and nearby wells. Mr. Kirkpatrick concurred. Mr. Mulligan said they would go with the 2,000 gpd. Atty. Schneider asked if there more questions before discussing the Resolution. Mr. Kirkpatrick said "No". Mr. Ford said they would proceed with the Resolution. Atty. Anderson wanted to know if the Public had been given an opportunity for more comments. Ms. McBride said she had one comment before the Board discussed and chose whether to vote or not. Ms. McBride thanked the Board and Subcommittee for their diligent work.

Atty. Schneider had questions about the Storm Water Management Plan (SMP) which he directed to Dr. Souza. He said Mr. Reymann didn't take exception to the SMP. Mr. Schneider said Dr. Souza's letter suggested that there be no increase in runoff from existing conditions, which Pilot had no problem with because they propose a decrease in runoff, or it could be read as suggesting that there could be no increase in runoff from the conditions that would exist if the site were a meadow field. He said they could not comply with that condition. Dr. Souza responded. His letter dated August 15, 2008 states that applicant needed to comply, to the fullest extent, with the Township Storm Water Management Ordinance and State Rules. Mr. Kirkpatrick understood Pilot's point as it pertained to the existing conditions. Dr. Souza explained that volume, water quality, recharge and total suspended solids reduction were analyzed to find out if State and Township requirements were satisfied. Atty. Schneider reiterated that Pilot could not comply with meadow field conditions. Dr. Souza said that the Board is dealing with a developed site and those conditions need to be evaluated. Mr. Kirkpatrick thought it should be interpreted as an existing site, as long as there is a reduction of the paved condition. Atty. Schneider noted Pilot can meet a 50% reduction.

Mr. Kirkpatrick said the Board doesn't understand the existing pollutant removal efficiency of the site. He said traffic will increase at the site and a water management system that removes 50% of pollutants is needed. Mr. Mulligan said Pilot would comply with current removal of pollutants, or 50%, whichever is greater. Dr. Souza was not comfortable with that statement. Atty. Anderson suggested that Dr. Souza discuss the matter with Pilot and reissue a letter. Dr. Souza said 80% should be the target value. The site is in a Category I Watershed and the Highlands. Mr. Kirkpatrick said he believed that with what is proposed, including the swale and potential modification of the detention basin, applicant may exceed 50%. Mr. Mulligan said he did not know what is presently being collected. Dr. Souza said it is 0%. Mr. Mulligan had been told that to get to 80% removal it would cost a million dollars and he would not pay that amount. Dr. Souza said he thought the DEP plays a numbers game. Mr. Woods explained requirements for DEP Certification. Dr. Souza disagreed with Mr. Woods' statements.

Mr. Ford said he thought Dr. Souza needed to revisit the matter. Mr. Kirkpatrick thought that Dr. Souza and Mr. Woods could come to an agreement. Atty. Anderson suggested that for purposes of the Resolution the Board acknowledge that Dr. Souza will issue a new review letter. Atty. Schneider said another approach would be to say that recommendations would be addressed and discussed at that time. Atty. Anderson preferred to say it would be Dr. Souza's recommendation. Mr. Kirkpatrick said it was something that could be done with the site plan. Atty. Schneider said "Okay".

Mr. Badenhausen had a question about the expansion of diesel capacity from 6 to 7 pumps. He did not see that as part of the relief sought in the request for five variances. Mr. Kirkpatrick said it was part of Mr. McDonough's testimony. Atty. Anderson said from a notice standpoint, applicant had provided information that included that expansion. Mr. Badenhausen said it looked as if there would be no additional pumps. Mr. Anderson said that issue could be addressed now or at the time of site plan application. Atty. Schneider said that was discussed in every iteration of the plan. Mr. Kirkpatrick said he agreed with Mr. Schneider; however, the application for the Highlands said there were no new pumps. Atty. Schneider reemphasized that the Notice included adding a new pump.

Atty. Schneider asked about square footages within the building. It was decided that the numbers would be limited to the plans as submitted. The restaurant will have 20 seats inside and 16 outside. Parking was discussed. There will be between 36 and 46 parking spaces for cars and 54 for trucks. That is a reduction and it could be looked at as an expansion of a nonconforming use. Mr. Schneider addressed the Municipal Court matter. There is an allegation of a past operation of unauthorized uses on the site. Pilot acknowledges that the current convenience store has not been authorized by the Board. It is Pilot's position that the store falls within the rubric of the prior nonconforming use. If the Court proceeding results in penalties, they will be paid. Atty. Anderson said the Board cannot resolve a matter that is pending in Municipal Court.

Atty. Schneider referenced the existing contamination. He did not feel applicant could exclude a remedial action that could be acceptable to the DEP, such as a CEA. Mr. Kirkpatrick explained CEA. That meant contamination would be left in place and it would be agreed not to withdraw groundwater. Mr. Kirkpatrick said testimony had been given by applicant of the intention to clean up the site. Mr. Schneider said a CEA means it is conceivable that appropriate remediation, as approved by the DEP, is a monitored natural attenuation. Mr. Kirkpatrick thought the Board would not want the applicant to just leave the contaminant in place. Dr. Souza said they were not talking about contaminated soil. At issue was a free-standing product, not some minor contaminants. Mr. Kirkpatrick said he had seen the DEP force superfund sites. Dr. Souza believes true remedial action is necessary. Mr. Kirkpatrick said he wouldn't exclude remedial action that included a CEA provided the plan included an aggressive plan to remove contaminants. Atty. Schneider said that rather than precluding the CEA, it would be better to state that active remediation would be involved.

Mr. Kirkpatrick indicated it was possible to get to the CEA without removing anything. Atty. Schneider said not if active remediation was required. Mr. Kirkpatrick wanted to know the level of active remediation. Dr. Souza noted the wording between NFA and CEA. Atty. Anderson said the matter would be part of site plan approval. Dr. Souza said the Board was looking for active remediation. Atty. Anderson said Pilot needs to understand that the matter needs to be fleshed out between now and site plan. Atty. Schneider referenced the Subway concept of freshly baked breads. Mr. Kirkpatrick said that a conventional bread baking oven could be included in the Draft Resolution, in addition to using a microwave. Regarding the additional diesel pump, Mr. Kirkpatrick said that would be discussed as part of the site plan.

A five minute recess was taken.

Atty. Schneider said he had no other comments on the Draft Resolution. Mr. Ford asked Atty. Anderson to list revisions to the Draft Resolution. Mr. Kirkpatrick made some changes. The issue of how the Board describes itself was mentioned. Atty. Anderson said the Statute defines a combined Board as a Planning Board. Attys. Anderson and Schneider had discussed relief that was requested. The Notice did not request site plan approval. Atty. Anderson said, however, that site plan is part of the application.

Atty. Anderson asked if any Board members had other comments or questions. Mr. Taibi referenced the Emergency Management and Idling Plans. Who needed to be satisfied? Mr. Kirkpatrick said it was the Planning Board. Atty. Anderson pointed that if the Board wanted to discuss issues in a closed session, it would be permissible. Mr. Kirkpatrick said that could be held after making a decision. Mrs. Corcoran asked about water and sewer meter readings and the recording method. The Draft Resolution should state recorded, instead of telemetrically. Atty. Anderson recited the revisions.

Mr. Ford asked if the Board was ready to proceed with a vote on the Resolution.

Mr. Kirkpatrick made a motion to approve the Resolution, with the amendment just discussed. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Walchuk, Mr. Martin, Mr. Taibi, Mr. Badenhause, Mrs. Corcoran, Mr. Ryland, Mr. Ford

Mr. Kirkpatrick made a motion to go into Executive Session to discuss Pilot Litigation.

Mr. Taibi seconded the motion. All Professionals were asked to remain. (10:40 p.m.)

Vote: All Ayes

A Resolution providing for a meeting Not Open to the Public in Accordance with the revisions of the N.J.S.A. 10:A-4-12.

WHEREAS, the Planning Board of the Township of Union is subject to the Open Public Meetings Act, N.J.S.A.10: A-4-6, et Seq., and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:A-4-12, provides that an Executive Session, not open to the Public, may be held for certain specified purposes when authorized by Resolution, and

WHEREAS, it is necessary for the Planning Board of the Township of Union, assembled in public session on September 2, 2008, in the Union Township Municipal Building, 140 Perryville Road, Hampton, NJ 08827, for the discussion of matters relating to the specific items designated above.

It is anticipated the deliberations conducted in closed session may be disclosed to the public upon determination by the Planning Board that the public interest will no longer be served by such confidentiality.

The Executive Session ended at 11:10 p.m.

Mrs. Corcoran made a motion to return to the regular session. Mr. Taibi seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Motion to Adjourn: Mr. Taibi made a motion to adjourn. Mr. Kirkpatrick seconded the motion. (11:20 p.m.)

Vote: All Ayes

Grace A. Kocher, Secretary